

HOUSE BILL REPORT

HB 1716

As Reported by House Committee On:
Public Safety

Title: An act relating to state and local enforcement of federal immigration detainers and administrative warrants.

Brief Description: Addressing state and local enforcement of federal immigration detainers and administrative warrants.

Sponsors: Representatives Moscoso, Appleton, Sells, Ortiz-Self, Robinson, Jinkins, Gregerson, Ryu, Peterson, Walkinshaw, Santos, Pollet and Farrell.

Brief History:

Committee Activity:

Public Safety: 2/11/15, 2/20/15 [DPS].

Brief Summary of Substitute Bill

- Prohibits a law enforcement agency (LEA) from detaining any person on the basis of an immigration detainer or administrative warrant after the person becomes eligible for release.
- Prohibits denial of bail solely on the basis of an immigration detainer or administrative warrant.
- Prohibits a LEA from assisting an immigration agent or expending state or local resources to comply with an immigration detainer, administrative warrant, or other noncriminal immigration enforcement.
- Prohibits a LEA from entering into an agreement that permits the LEA to enforce federal civil immigration laws.
- Requires a certifying agency to decide upon the request for certification by a victim of criminal activity according to a specific timeline and designate an agent to respond to such requests and perform other duties.
- Requires the Washington Law Enforcement Training Standards Board to adopt minimum standards for training regarding certain visas, remedies for immigrant survivors of criminal activity, and cultural diversity awareness.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Requires certifying agencies to complete training regarding certain visas, remedies for immigrant survivors of criminal activity, and cultural diversity awareness.
- Creates the Washington Family Unity Act Compliance Board.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Goodman, Chair; Orwall, Vice Chair; Appleton, Moscoso and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey and Wilson.

Staff: Cassie Jones (786-7303).

Background:

Alien.

Under federal law, the term "alien" means any person not a citizen or national of the United States.

Immigration and Customs Enforcement and State and Local Agencies.

The United States Immigration and Customs Enforcement (ICE) enforces federal laws governing border control, customs, trade, and immigration. The ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the former United States Customs Service and the Immigration and Naturalization Service. The ICE operates a program called the Criminal Alien Program (CAP) which seeks to identify, arrest, and remove aliens who are incarcerated within federal, state, and local prisons and jails, or who are at-large. Many county and municipal jails, as well as the Department of Corrections (DOC), participate in the CAP and collaborate with ICE officials in a variety of ways. Collaboration and cooperation is voluntary.

In 2008 the ICE implemented the Secure Communities program. Through this program, the ICE accesses fingerprint data received by the Federal Bureau of Investigation (FBI). All fingerprint data submitted by Washington agencies to the FBI is accessible by the Secure Communities program. Washington law requires that once a person is committed to a correctional facility, the facility must identify whether the person is an alien and notify immigration officials.

Administrative Warrants.

The ICE has the authority to issue a warrant of deportation for any alien with an outstanding final order of deportation. The warrant of deportation authorizes ICE officers to take into custody and remove the alien. If consistent with state law, federal law permits state and local law enforcement to arrest and detain an alien who has returned to the United States after having been convicted of a felony and deported or left the United States after the felony

conviction. The person may be arrested and detained only after his or her status has been confirmed through the ICE. Under Washington law, state and local officers are permitted to arrest under those circumstances because illegal re-entry after removal or deportation is a felony.

Immigration Detainers.

An immigration detainer as defined in 8 C.F.R. §287.7 is a request from the ICE that a federal, state, or local law enforcement agency notify the ICE before releasing an alien in their custody, to allow the ICE to take custody for arrest and removal. Detainers may be issued by border patrol agents, special agents, deportation officers, immigration inspectors, immigration enforcement agents, adjudications officers, or supervisory personnel. Section 287.7 also states that when a detainer is issued for an alien not otherwise detained, a state or local criminal justice agency must maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, in order to allow the ICE to assume custody.

Visas.

Victims of certain designated crimes (*e.g.*, domestic violence, felonious assault, involuntary servitude, and numerous other offenses) may be granted a "U nonimmigrant status visa" (U visa) for three years when requisite officials certify that the applicant has been, is, or is likely to be helpful in any investigation or prosecution of the crime. Victims of sex trafficking and labor trafficking can be granted a "T nonimmigrant status visa" (T visa) for three years when requisite officials certify that the applicant has complied with any reasonable request for assistance in any investigation or prosecution of the trafficking crime or other crime in which acts of trafficking are at least one central reason for the commission of that crime.

Summary of Substitute Bill:

Immigration and Customs Enforcement and State and Local Agencies.

A law enforcement agency (LEA) may not do any of the following:

- detain or continue to detain an individual on the basis of an immigration detainer or administrative warrant after the person becomes eligible for release;
- give any immigration agent access to a person or allow the agent to use the LEA's facilities for any purpose;
- expend resources responding to immigration agent inquiries or communicate with the agent regarding any person's incarceration status, release date, or contact information;
- expend resources to comply with an immigration detainer or administrative warrant or facilitate any other non-criminal immigration enforcement;
- stop, arrest, search, or detain a person based solely on an administrative warrant; or
- enter into an agreement with a federal agency which permits it to enforce federal immigration laws.

Bail may not be denied a person based solely on an immigration detainer or warrant.

State and local units of government may not contract with a private, for-profit vendor for the provision of services, other than ancillary services, relating to the operation or management

of a facility to detain individuals in federal immigration removal proceedings, or otherwise facilitate the construction, operation or management of such a facility.

Visas.

When a victim of criminal activity requests a certification for a visa, the certifying agency must make a determination regarding the request within 90 days of its receipt. If the victim requesting certification is subject to removal proceedings, the certifying agency must execute the certification no later than 14 days after its receipt. If the victim of criminal activity is under 21 years old or has children under 21 years of age, and may lose the ability to procure a U or T visa based on age, the certifying agency must execute the certification no later than 14 days before the victim or his or her children reach the age of 21 years old, or within 90 days of the request, whichever is earlier. If the agency denies the request for certification, it must do so in writing and articulate the reasons for the denial.

The head of every certifying agency must designate an agent to perform the following responsibilities:

- respond to certification requests;
- provide outreach to victims of criminal activity to inform them of the agency's certification process; and
- keep written records of all certification requests and responses and report them to the Washington Family Unity Act Compliance Board (Compliance Board) each year.

All certifying agencies must develop a language access protocol for non-English speaking victims of criminal activity.

The Washington Law Enforcement Training Standards Board (Standards Board) must adopt rules for minimum standards for a course of study of cultural sensitivity that includes training relating to U and T visas, remedies for immigrant survivors of criminal activity, and cultural diversity awareness. All certifying agencies not subject to the Standards Board must provide continuing education concerning U and T visas, remedies for immigrant survivors of criminal activity, and cultural diversity awareness. All certifying agencies must complete the trainings and report completion of the trainings within 18 months of the effective date of the act.

Washington Family Unity Act Compliance Board.

The Compliance Board is created with members to be appointed by the Governor. The Compliance Board consists of five members serving three year terms. Membership is to be chosen from among immigrant communities, law enforcement, and other entities concerned with public safety and effective cooperation between immigrants and local police. The following are the Compliance Board's duties regarding the provisions of this act:

- monitor compliance;
- train LEAs and others;
- disseminate information about the act to affected communities and the public;
- establish mechanisms by which the public can report concerns regarding implementation;
- identify implementation issues to the Governor and the Attorney General; and
- conduct research regarding investigations of citizenship status by LEAs, sharing of information in LEAs' databases with immigration agents, immigration agents' use of

state databases, and the impact of database sharing between immigration agents and LEAs on immigrant communities.

Substitute Bill Compared to Original Bill:

The proposed substitute bill:

- includes in the definition of "law enforcement agency," any agency in Washington that qualifies as a criminal justice agency as defined in RCW 10.97.030(5);
- excludes the DOC from the definition of "law enforcement agency";
- deletes the prohibition on law enforcement agencies sharing booking lists with immigration agents;
- clarifies the prohibition on agencies contracting with private, for-profit vendors for provision of services other ancillary services by specifying the following as ancillary services: water, sewer, garbage, and other utilities;
- deletes the provision that permits a victim of criminal activity to bring an action in court to seek a certification for a U or T visa or dispute the denial or the content of a certification;
- requires the Standards Board to adopt rules for minimum standards for education concerning cultural diversity awareness;
- requires certifying agencies not subject to the Standards Board to adopt education concerning cultural diversity awareness;
- requires certifying agencies to complete the training on U and T nonimmigrant visas, remedies for immigrant survivors of criminal activity, and cultural diversity awareness within 18 months of the effective date of the act. The agencies must report on the completion of this training to the Compliance Board within 18 months of the effective date of the act;
- deletes the cause of action that allowed any Washington resident to bring an action in superior court to challenge any law enforcement official or agency for failure to fully comply with the act; and
- makes technical corrections.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2015.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The immigration system is broken. Political wrangling in Congress has exacerbated the suffering of immigrant communities. Until the system is fixed, something can be done here in Washington. This bill would prohibit unconstitutional extensions of detention based on ICE detainers and redirects LEA efforts toward the local community. The role of local police should be separated from the ICE. The bill would help assure that victims

and witnesses of crime are not deported for reporting it. This bill is about humanity toward people who are living here and need to be taken care of.

It was not the intent of the bill to undermine the DOC's early deportation program. There have been some shifts in responses to ICE detainers among the local jails but there is wide variation in practice. A state law is needed for a uniform process. The ICE has said that its priority is apprehending people with criminal histories. But its dragnet has caught up people with no criminal convictions or minor criminal convictions. Collaboration between local law enforcement and the ICE undermines immigrants' trust in law enforcement. There are serious costs to this loss of trust. Immigrants have fears of reporting crimes because they can become subject to deportation. There are gaps in the certification process; some agencies have a blanket policy not to certify. The bill would create a statewide policy for victims to get a response to their certification requests. There have been instances where qualified victims have requested a certification from an agency and did not receive a response. The goal of this legislation is to make sure that victims feel safe enough to come forward and ask for help from law enforcement. Collaboration between local agencies and ICE has oppressed immigrants and separated families. Washington can and should do something to stop this.

(In support with amendments) Section 7 of the bill concerns U visas. It's a great program that helps victims and witnesses of criminal activity. Subsection 2 of section 7 provides that if an agency does not certify, there can be an appeal to the court. This cannot be done because there is no legal requirement to certify for a U visa. The certifier has to swear under penalty of perjury and certifiers cannot be forced to swear to an opinion they do not hold. This could make the system adversarial and cause victims to fall through the cracks.

(With concerns) There is an impact on the DOC due to the DOC's early deportation program. Offenders who go to the DOC and have an ICE detainer are eligible for early deportation if the offender agrees. This bill would eliminate the program. This would be an impact of over \$1 million a year.

(Opposed) There may be support for language that would codify the Clackamas County case regarding non-judicial detainers. Every jail is already complying with this. There are certain things which some agencies cannot support, such as prohibitions on cooperation between local agencies and the ICE and the cause of action the bill creates. There are concerns regarding the U visa section. Local cities with immigration facilities have concerns. Some cities have valuable and productive working relationships with the ICE which would be hindered by the bill. The bill also forbids contracting with for-profit vendors other than ancillary services, but ancillary services is not defined. The cities are concerned that ancillary services could apply to a variety of services. The language is also vague. There are also concerns about the increased liability in section 9 and the U visa program.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; Annie Benson, Washington Defender Association; Jorge Baron, Northwest Immigrant Rights Project; Grace Huang, Washington State Coalition Against Domestic Violence; Jolinda Stephens, Northwest Detention Center Resistance and Unitarian Universalist Voices for Justice; Veronica Noriega and Alvarado Arnold, Colectiva Legal del Pueblo; Ariana Cazorla, One America; and Krista Jensen, Washington Dream Act Coalition.

(In support with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Bernie Warner, Department of Corrections.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Briahna Taylor, City of Tacoma and City of SeaTac.

Persons Signed In To Testify But Not Testifying: None.